

CONFIDENTIAL

GENERAL COUNSEL'S OPINION NUMBER 51-1, DATED 27 AUGUST 1951

- (a) Transportation of a private automobile between two U.S. stations is not authorized by law.
- (b) Per diem is not payable for dependents' travel in U.S. or at permanent duty station for employee.

TO THE DEPUTY DIRECTOR (ADMINISTRATION)

1. Reference is made to the attached memorandum from the Chief, FE/OPC, concerning [redacted] who recently was transferred to [redacted] from Washington, D. C. You have requested our comments concerning the proposed payment of \$526.80 to Mr. B.

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2. The first proposal is that Mr. B. be paid \$140.80 for shipment of his privately-owned automobile from Washington to [redacted]. The following statute was enacted by Congress to govern such a problem:

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"Hereafter, no law or regulation authorizing or permitting the transportation at Government expense of the effects of officers, employees, or other persons, shall be construed or applied as including or authorizing the transportation of an automobile..." (5 USCA 73c).

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3. The second proposal is that per diem be paid to Mr. B. and his two dependents. As Colonel S. has indicated, it is well established that per diem cannot be authorized for dependents in such a situation, and that per diem is not payable to an employee at his permanent duty station. Paragraph 46 of the Standardized Government Travel Regulations provides that "under no circumstances will per diem in lieu of subsistence be allowed an employee at his permanent duty station." While it would have been possible to assign Mr. B. to temporary duty in [redacted] and thereby to authorize payment of per diem, this would have been an obvious subterfuge because [redacted] was in fact his permanent duty station. The Comptroller General has phrased his objection to such action in this manner:

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"An administrative office may not by a designation contrary to the actual facts fix the permanent duty station of an employee at one place for the purpose of paying him a per diem in lieu of subsistence as on temporary duty in a travel status at another place." (Syllabus, 19 Comp. Gen. 347).

25X1 4. The possibility of amending the travel order to authorize per diem in [] also has been considered. The Comptroller General has permitted the correction of clerical error in a travel order, but he does not favor the amendment of a travel order simply to prescribe per diem. For example, the United States Tariff Commission in a similar case issued an order authorizing per diem retroactively. The Comptroller General, however, held that this order was not effective, and the employee received no per diem (7 Comp. Gen. 277).

5. We have also considered Colonel S.'s statement that [] is an overseas operation which requires domestic support. While this is correct, it does not alter congressional prohibitions against shipment of privately-owned automobiles within the continental limits of the United States, nor does it change the application of rules and regulations for the payment of per diem.

7. While it is true that a degree of hardship is involved in this case, it is the same hardship that faces other Government employees, including Mr. B.'s fellow CIA employees, whenever they perform similar travel within the United States.

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LAWRENCE R. HOUSTON
General Counsel

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